

MOHAMMAD BODAGHI,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-11

OPINION

This is an appeal of the Appellant's unsatisfactory teacher evaluation for the 2002-2003 school year and subsequent non-renewal of his provisional teacher's contract. The local board has submitted its Response to the Appeal, seeking affirmance of the local board's decision on the grounds that it was not arbitrary, unreasonable or illegal. Appellant has submitted a Reply to the local board's Response.

FACTUAL BACKGROUND

The Appellant, Dr. Bodaghi, was a teacher with the Prince George's County School System in August 2002 and assigned to teach Biology and Earth Sciences at Central High School.¹ Dr. Bodaghi's employment was governed by the Provisional Contract for Conditional or Resident Teacher Certificate Holders. Such contracts are for a period of one year. Appellant's contract expired on June 30, 2003.

A new teacher's orientation program was held before the start of the 2002-2003 school year, which Dr. Bodaghi says he was not allowed to attend.² At the orientation, among other things, teachers were instructed in how to use the "5 Es" method of teaching math and science.

¹The Appellant initially joined the local school system in 1999 as a teacher at Croom High School, but was placed on leave pending an investigation of allegations regarding false and misleading information on his employment application. The Appellant was eventually cleared of those charges. Although he has submitted several documents and included considerable discussion in his appeal surrounding his removal and reinstatement with the school system, that issue is unrelated to this appeal of the unsatisfactory teacher evaluation at Central High School.

²It remains unclear from the record exactly how or why the Appellant was not allowed to attend the staff development program.

Central High School Principal Sheila Murray³ conducted her first formal observation of Dr. Bodaghi's class instruction on October 1, 2002. Ms. Murray identified problems related to poor lesson planning and poor classroom management skills. In her evaluation, among other things, Ms. Murray expressed concern that Dr. Bodaghi did not engage the students, did not indicate how students could illustrate an understanding of the material, nor did he effectively use the "5 Es" teaching method.

After receiving Ms. Murray's written observation, Dr. Bodaghi, among other things, disputed her comment regarding the "5 Es" teaching method because he did not have the opportunity to learn this form of instruction at the teacher orientation program. Dr. Bodaghi arranged to observe another teacher during class at a different high school.

Ms. Murray's second formal observation of Dr. Bodaghi was on January 22, 2003. In her evaluation, Ms. Murray did commend Dr. Bodaghi for having all students in their chairs and heads off their desks before the bell rang. However, Ms. Murray also noted some of the same concerns identified during her previous observation regarding his classroom management skills. In addition, she observed that classroom discussion regarding the use of DNA in a death penalty case seemed more of a monologue by Dr. Bodaghi, centered more on social studies than science, and did not seem to teach the students anything they did not already know.

Two days later on January 24, 2003, Dr. Bodaghi was formally observed by Lia C. Thompson, Regional Instructional Specialist for Region III. On the observation form, Ms. Thompson complimented Dr. Bodaghi on presenting "a very nice written lesson plan for your students that followed the 5 E's format." However, Ms. Thompson also provided recommendations relating to Dr. Bodaghi's management and engagement of the class, including the need to modify his instructional focus when seeing students are not able to successfully attend to an activity; the need to draw more upon students' prior knowledge; and the need to provide more guidance for the activity to be successful.

Based on her two formal observations, Ms. Thompson's formal observation and at least two informal observations,⁴ Principal Murray issued her interim evaluation of Dr. Bodaghi on January 27, 2003. Dr. Bodaghi was rated "satisfactory" in most categories, but he was rated as "needs to improve" in the following categories:

- Presents lessons in such a way as to encourage students to employ higher order critical thinking skills.

³Sheila Murray's name is now Sheila McConnell. For simplicity, however, we will refer to her as Ms. Murray throughout this memorandum.

⁴Ms. Murray did not state when or by whom these informal evaluations occurred.

- Demonstrates knowledge of subject matter and transmits that knowledge in an interesting manner using a variety of techniques and/or materials to accomplish the objectives of instruction.
- Uses current curricular and instructional practices which relate to effective education.

In addition, he was rated as “unsatisfactory” in the following categories:

- Creates a classroom climate that is warm and inviting. Promotes the development of positive self concept for all students.
- Maximizes the use of time for instructional purposes, with all students being involved in meaningful learning activities.
- Demonstrates a keen understanding of the needs, concerns, abilities and interest of each student in such a manner that leads to the delivery of needed instructional or other resources.
- Performs so that there is observable satisfactory growth in children.

Ms. Murray did not check a box indicating her “overall rating” because administrators were advised by the Executive Director for Region III not to do so for interim evaluations.

On March 18, 2003, Dr. Marcus Newsome, Executive Director for Region III, met with Dr. Bodaghi to discuss his evaluation. Dr. Bodaghi expressed his opinion that he had received an unfair evaluation. Dr. Newsome advised him to discuss the matter with Ms. Murray and develop an action plan to improve areas of concern.

Ms. Murray’s last formal observation of Dr. Bodaghi occurred on March 31, 2003. Ms. Murray commended Dr. Bodaghi for having “an excellent written lesson plan of oral lecture notes prepared.” However, Ms. Murray left the observation with concerns similar to those she had during the October observation. Ms. Murray felt that Dr. Bodaghi did not really engage his students, but simply lectured to them. Among other things, she also observed that the students did not appear to write down information, nor did she see any indication that the objective of the class was accomplished.

Dr. Bodaghi submitted his action plan to Ms. Murray on April 21, 2003, in response to the areas for improvement identified in his interim evaluation. Ms. Murray did not visit his classroom for another observation after receiving this action plan.

Dr. Bodaghi’s final teacher evaluation for the 2002-2003 school year was issued on May 30, 2003. Ms. Murray found him unsatisfactory in three areas:

- Creates a classroom climate that is warm and inviting. Promotes the development of positive self concept for all students.

- Demonstrates a keen understanding of the needs, concerns, abilities and interest of each student in such a manner that leads to the delivery of needed instructional or other resources.
- Performs so that there is observable satisfactory growth in children.

Overall, Ms. Murray gave Dr. Bodaghi an unsatisfactory rating for the year.

Dr. Bodaghi's provisional teacher's contract ended on June 30, 2002. The school system decided not to offer him a provisional contract for the 2003-2004 year.

In a letter dated July 18, 2003, the Prince George's County Educators' Association appealed the unsatisfactory evaluation and non-renewal of the contract to then CEO of Prince George's County Schools, Dr. Andre Hornsby. The decision was upheld in a letter dated November 11, 2004.⁵

Dr. Bodaghi next appealed to the local board of education, which held its hearing on September 22, 2005. In an order dated October 27, 2005, the local board affirmed the decision of the CEO. This appeal to the State Board followed.

STANDARD OF REVIEW

Unsatisfactory Evaluation

The standard of review that the State Board applies in reviewing the decision of a local board concerning a local policy is that the local board decision shall be considered *prima facie* correct, and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the county board reached. COMAR 13A.01.05.05.

Provisional Contract

COMAR 13A.07.02.01C sets forth the terms of the Provisional Contract for Conditional or Resident Teacher Certificate Holders and provides in pertinent part:

The term of this contract shall extend from the date of its signing until the thirtieth day of June next succeeding said date of signing, and this contract shall automatically terminate and expire on the thirtieth day of June next succeeding the date of its signing.

⁵A copy of the letter was not provided in either of the party's submissions.

Because this contract exists for only one year, the only basis for reversal of the local board's decision not to enter into a new contract is if the decision were made for illegal or constitutionally discriminatory reasons. *See Board of Regents v. Roth*, 408 U.S. 564, 578-79 (1972) (finding absent a constitutional violation, there is no other process due a non-tenured teacher).

ANALYSIS

COMAR 13A.07.02.01C sets forth the provisional contract for holders of conditional certificates. As stated above, every provisional contract is for a term of one year. Thus, Appellant could have no expectation of continued employment beyond the contract term. Appellant has not presented any evidence that the local board's opinion affirming Dr. Hornsby's decision not to offer Appellant a contract for the 2004-2005 school year was illegal or unconstitutional. Because even satisfactory evaluations do not guarantee that a new provisional contract will be offered, we conclude that an analysis of the reasonableness of the unsatisfactory evaluation is not necessary for this decision. However, for the following reasons we find that the unsatisfactory evaluation is neither arbitrary nor unreasonable.

Attendance of New Teacher Orientation

Appellant first argues that despite his repeated requests, he was not allowed to attend the required new teacher's orientation program held from August 13-20, 2002. *See* Local Appeal Hearing Transcript at 5-6, 26-27; Bodaghi Affidavit at ¶4-5, 8; July 31, 2002 letter to Sheldon Gnatt (requesting information needed to reinstall Dr. Bodaghi as soon as possible "[s]ince orientation for the next semester's teachers is quickly approaching"). If he had been allowed to attend, Appellant asserts that he would have "been given instruction on the '5Es' method of teaching and evaluation strategies required by the school system." Bodaghi Affidavit at ¶5. Without this training, Appellant asserts that he "began teaching at a new school and in a different subject without the benefit of receiving the proper teacher preparation training" and that observations regarding his failure to use the "5 Es" method were unfair. *Id.* at ¶5-6.

Appellant does not state how or why he was not allowed to attend the program or provide any support that attendance of the program was required by the local school system. However, Principal Murray did not indicate that this training was required by the school system. *See* Murray Affidavit at ¶3 ("[E]ven if a teacher is unavailable, for whatever reason, for the staff development program ..., it is very easy for a good, competent and qualified teacher to learn the framework used in [the 5 Es] methodology.")

Based on the materials presented, our conclusion is that the orientation program was not required in order for the local school to fairly evaluate the Appellant's instruction. Principal Murray noted that even if the orientation program would have helped the Appellant, the classroom management skills she found lacking were "skills that a good, competent and qualified teacher should have brought to the building." Murray Affidavit at ¶4.

Class Use of Biology Lab

Appellant next argues that Principal Murray refused to allow his class to use a biology lab, which accounted for 20% of each student's grade. Appeal Hearing Transcript at 7-8; Bodaghi Affidavit at ¶7, 9-10; Reply at 1-2. He asserts that his repeated requests to Principal Murray to allow his students to use the biology lab prompted an angry response from her in which she stated that if he pushed the issue any further, he would receive an unsatisfactory evaluation and be terminated. *Id.* at ¶10. Ms. Murray denies ever denying use of the lab to Dr. Bodaghi's class. Murray Affidavit at ¶5.

We find the Appellant's argument unpersuasive and the alleged statement by Ms. Murray unsubstantiated in the record. Even if use of the biology lab was required for Dr. Bodaghi to fairly grade his students, it has no bearing on Ms. Murray's observations regarding his classroom management and teaching skills. Dr. Bodaghi was not being evaluated throughout the year on the performance of his students, but on his instruction.

Final Evaluation Did Not Include Review of Action Plan

On April 21, 2003, the Appellant provided Ms. Murray an action plan to address the concerns identified in his January 27, 2003 interim teacher evaluation. He stated that he was asked to prepare and provide this to Ms. Murray on April 10, 2003, the day before spring break began. *See* Bodaghi Affidavit at 16. The Appellant argues, however, that the only feedback he received from Ms. Murray was when he inquired about his performance and she said he was doing "just fine". *Id.* Ms. Murray denies any recollection of these conversations. Murray Affidavit at ¶11.

In addition, the Appellant argues that Ms. Murray failed to conduct another formal observation to see the action plan implemented. Local Appeal Hearing Transcript at 14; Appellant's Reply at ¶12. As a result, the Appellant argues that the final overall evaluation rating of "unsatisfactory" was unreasonable.

The Respondent does not address the Appellant's action plan at all in its submissions. Based on the evidence provided, however, we conclude that this issue is insufficient to find Principal Murray's final evaluation was arbitrary or unreasonable. The Appellant does not assert that local board or school policy requires a certain number of observations before a teacher can receive an overall evaluation. He simply wishes that Ms. Murray had observed his class once more before issuing her final evaluation. Understandable as that may be, and despite the Appellant's passionate arguments to the contrary, he does not present any convincing evidence that Ms. Murray's failure to do so was illegal.

Final Evaluation was Improperly Rated as “Unsatisfactory”

The Appellant argues that since his final evaluation contained 18 “satisfactory” ratings and only three “unsatisfactory”, his overall rating should have been “satisfactory”. Further, the Appellant argues that his previous satisfactory evaluations as a teacher at Croom High School, his award for exemplary performance at TechWorld Public Charter School in D.C., and the letter of recommendation from Central High School’s Vice-Principal support his assertion that Principal Murray’s overall rating for the 2002-2003 year was wrong. Local Appeal Hearing Transcript at 12; Bodaghi Affidavit at ¶20; Appellant’s Reply at 1-2.

The Respondent argues that the evaluation is intentionally designed not to be a weighted instrument and that the overall rating is at the principal’s discretion. Local Appeal Hearing at 23-24. The Respondent asserts that the decision to rate the Appellant overall as unsatisfactory is also supported by the facts in the record, gathered during several observations of Dr. Bodaghi. In addition, the Respondent argues that despite the Appellant’s assertion that there were “only three” unsatisfactory ratings, “the school system deserves to have teachers who are satisfactory in all” areas. Local Appeal Hearing Transcript at 16. Finally, the Respondent contends that Dr. Bodaghi’s performance at other schools had no bearing on his performance at Central, which was the focus of his evaluation. *Id.*

We do not find any evidence in the record that Principal Murray’s overall unsatisfactory rating was arbitrary, unreasonable, or illegal. The Respondent correctly argues that Dr. Bodaghi’s performance at other schools, during other times, bears no relation to his performance at Central during the 2002-2003 school year. Further, the letter of recommendation from Central High School’s Vice-Principal was just that - a recommendation - and not an evaluation of Dr. Bodaghi’s instruction.

Violation of Privacy

Finally, the Appellant asserts that Principal Murray made several comments on May 22 and May 23, 2003 in the presence of staff and others regarding his pending termination, which violated his right to privacy. Appellant’s Reply at ¶16-18; Bodaghi Affidavit at ¶18-19. Ms. Murray denies ever making these statements. Murray Affidavit at ¶12.

In addition, the Appellant states that, on May 30, 2003, Ms. Murray requested his signature on his final evaluation in the presence of others, in violation of section 4.08 of the Negotiated Agreement between Prince George’s County Educators’ Association and the Board of Education of Prince George’s County.⁶ The Respondent did not address this allegation.

⁶The Appellant does not provide a complete copy of this agreement, but only the cover page and page seven, which contains the section he alleges was violated by Ms. Murray. In addition, this incomplete copy of the Agreement was in effect until June 30, 2002, while the conduct challenged by the Appellant occurred on May 31, 2003. For both of these reasons, we do not consider this Agreement probative for purposes of our analysis.

The Appellant is alleging that the Principal violated his right to privacy. The State Board, we believe, is not the proper forum to decide whether or not a common law or constitutional tort was committed.

CONCLUSION

Based on the evidence presented, it is our opinion that the local board's decision not to offer Appellant a new teaching contract was neither illegal nor unconstitutional. Furthermore, it is our opinion that the local board's decision affirming the unsatisfactory evaluation was neither arbitrary, unreasonable, nor illegal. Accordingly, we affirm the decision of the local board.

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April 26, 2006